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7 Attorneys for Defendants S. Latham, M. Edwards,
B. Jain, M. Morgan and M. McLean
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9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 **MARC DAWSON,**

13 Plaintiff,

14 v.

15 **S. LATHAM, M. EDWARDS, B. JAIN,**
16 **M. MORGAN, M. MCLEAN and A.**
17 **THACKER,**

18 Defendants.

C 08-0741-JF(PR)

**MOTION FOR ADMINISTRATIVE
RELIEF TO PERMIT ADDITIONAL
TIME TO FILE MOTION FOR
SUMMARY JUDGMENT OR OTHER
DISPOSITIVE MOTION**
(Local Rule 7-11)

Judge: Hon. Jeremy Fogel

19
20 **TO PLAINTIFF *IN PRO PER*:**

21 **PLEASE TAKE NOTICE** that defendants S. Latham, M. Edwards, B. Jain, M. Morgan
22 and M. McLean move for additional time to file a motion for summary judgment or other
23 dispositive motion. Plaintiff is a *pro per* inmate who claims that an incident of inadequate
24 medical care constitutes a violation of the Eighth Amendment. The motion for administrative
25 relief is made on the grounds that additional time is needed to obtain, review and analyze the
26 plaintiff's medical file, and to prepare dispositive motions on behalf of the five defendants who
27 have been served in the case.
28

1 This motion is made upon this notice of motion and motion, the accompanying
2 memorandum of points and authorities and declaration of Deputy Attorney General Harry T.
3 Gower, III, and the papers and pleadings on file herein.

4 Dated: July 9, 2008

5 Respectfully submitted,

6 EDMUND G. BROWN JR.
Attorney General of the State of California

7 PAUL T. HAMMERNESS
Supervising Deputy Attorney General

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9
10 /s/ HARRY T. GOWER, III

11 HARRY T. GOWER, III
Deputy Attorney General

12 Attorneys for Defendants S. Latham, M. Edwards,
13 B. Jain, M. Morgan and M. McLean

14
15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **PROCEDURAL AND FACTUAL HISTORY**

17 The plaintiff Marc Dawson, a prisoner at High Desert State Prison in Susanville, was
18 previously incarcerated at Pelican Bay State Prison in Crescent City. He filed his *pro se* civil
19 rights complaint under 42 U.S.C. §1983 on February 6, 2008, complaining of inadequate medical
20 care at Pelican Bay. (Docket No. 3).

21 On May 8, 2008, the Court issued an Order of Partial Dismissal and Service; Directing
22 Defendants to File Dispositive Motion or Notice Regarding such Motion. (Docket No. 6). In the
23 Order, the Court ordered the United States Marshal to serve Plaintiff's complaint on six
24 individual defendants, and the Court ordered those defendants to file a motion for summary
25 judgment or other dispositive motion no later than 90 days from the date of the order, in other
26 words, no later than August 7, 2008.

27 ///

1 The United States Marshal mailed the summons and complaint on the six defendants on
2 or about May 29, 2008. Defendants forwarded their summonses and complaints to the Office of
3 the Attorney General on or about June 29, 2008. The undersigned counsel received the case on
4 July 7, 2008, the Monday after the Fourth of July weekend. (Declaration of Harry T. Gower, III
5 (“Gower Decl.”), ¶ 2.)

6 Defendants Latham, Edwards, Jain, Morgan and McLean acknowledged receipt of
7 service on July 8, 2008. (Gower Decl., ¶ 2.) Defendant Thacker has not acknowledged receipt
8 of service.

9 Defendants Latham, Edwards, Jain, Morgan and McLean now seek leave of court for
10 additional time to file a motion for summary judgment or other dispositive motion. Their
11 counsel did not receive the case until July 7, 2008, a mere thirty (30) days before the current
12 deadline for dispositive motions. Defendants have not yet obtained Plaintiff’s medical and
13 dental records. Once those records are received, it will take some time to analyze them,
14 interview the persons involved, and then prepare a dispositive motion. (Gower Decl., ¶ 3.)

15 Accordingly, Defendants respectfully request that the time for them to file a dispositive
16 motion be extended an additional 90 days, to November 5, 2008.

17 ARGUMENT

18 Defendants request an additional 90-day extension of time from February 6, 2008, up to
19 and including November 5, 2008, in order to file dispositive motions contemplated by the
20 Court’s Order of Service. This request is made in good faith and not for the purpose of delay.
21 As stated above, service of the summons and complaint was not attempted until May 29, 2008,
22 defense counsel was not assigned to the matter until July 7, 2008, and defendants did not
23 acknowledge receipt of service until July 8, 2008. Plaintiff’s records have not yet been obtained.
24 Once the records are obtained, they will need to be analyzed, then counsel will need time to
25 prepare a dispositive motion.

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27 ///

CONCLUSION

For the foregoing reasons, defendants Latham, Edwards, Jain, Morgan and McLean request an extension of time in which to file a summary judgment or other dispositive motion to November 5, 2008.

Dated: July 9, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

PAUL T. HAMMERNESS
Supervising Deputy Attorney General

/s/ *HARRY T. GOWER, III*
HARRY T. GOWER, III
Deputy Attorney General

Attorneys for Defendants S. Latham, M. Edwards,
B. Jain, M. Morgan and M. McLean

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: *Dawson v. Latham, et al.*

No.: C 08-0741-JF(PR)

I, Corazon Marcelino, declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.


On July 9, 2008, I served the attached **MOTION FOR ADMINISTRATIVE RELIEF TO PERMIT ADDITIONAL TIME TO FILE MOTION FOR SUMMARY JUDGMENT OR OTHER DISPOSITIVE MOTION; DECLARATION OF HARRY T. GOWER, III IN SUPPORT OF MOTION FOR ADMINISTRATIVE RELIEF TO PERMIT ADDITIONAL TIME TO FILE MOTION FOR SUMMARY JUDGMENT OR OTHER DISPOSITIVE MOTION; and [PROPOSED] ORDER GRANTING DEFENDANTS' MOTION FOR EXTENSION OF TIME** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Marc Charles Dawson
P-13296
High Desert State Prison
P.O. Box 3030
Susanville, CA 96127-3030**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 9, 2008, at San Francisco, California.

Corazon Marcelino

Declarant


Signature

EDMUND G. BROWN JR.
Attorney General of the State of California
PAUL T. HAMMERNESS
Supervising Deputy Attorney General
HARRY T. (CHIP) GOWER, III (SBN 170784)
Deputy Attorney General
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Attorneys for Defendants S. Latham, M. Edwards,
B. Jain, M. Morgan and M. McLean

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARC DAWSON,

Plaintiff,

v.

**S. LATHAM, M. EDWARDS, B. JAIN,
M. MORGAN, M. MCLEAN and A.
THACKER,**

Defendants.

C 08-0741-JF(PR)

**DECLARATION OF HARRY T.
GOWER, III IN SUPPORT OF
MOTION FOR ADMINISTRATIVE
RELIEF TO PERMIT ADDITIONAL
TIME TO FILE MOTION FOR
SUMMARY JUDGMENT OR OTHER
DISPOSITIVE MOTION**
(Local Rule 7-11)

Judge: Hon. Jeremy Fogel

I, HARRY T. GOWER, III, declare:

1. I am a Deputy Attorney General for the State of California, licensed to practice law before all courts in this State. I am the attorney assigned to defend S. Latham, M. Edwards, B. Jain, M. Morgan and M. McLean in this action. The statements made in this declaration are made and based upon my personal knowledge, and were I called as a witness I could and would competently testify about them.

2. I received the file in this matter, which includes the defendants' requests for representation, on July 7, 2008. My review of the file showed that the U.S. Marshals Service mailed the summonses and complaints to the defendants on or about May 29, 2008. On behalf of

1 defendants S. Latham, M. Edwards, B. Jain, M. Morgan and M. McLean I acknowledged receipt
2 of summons and complaint on July 8, 2008. On information and belief, defendant Thacker is no
3 longer employed by the State of California, and is believed by his former employers to now
4 reside out-of-state.

5 3. Upon receipt of this case file, I immediately caused to be subpoenaed the
6 plaintiff's prison records. I have not yet received those records. Once the records are received, I
7 will have them reviewed and analyzed by a medical expert. I will also interview witnesses to
8 garner information not contained in the records. If the facts warrant, I will then prepare a
9 dispositive motion (or notify the Court that defendant will not file such a motion).

10 4. On May 8, 2008, this Court ordered that defendants file a dispositive motion
11 within 90 days of that date, in other words, by August 7, 2008. Because I just recently received
12 the case, I will not be able to prepare such a motion by August 7, 2008. Therefore, I respectfully
13 request that the Court give defendants an additional 90 days to prepare a dispositive motion, to
14 November 5, 2008. This request is made in good faith and not for the purpose of delay.

15 5. I have not obtained a stipulation for an extension of time from the plaintiff
16 because the time is so short to have this issue decided. Therefore, I am submitting this request
17 directly to the Court.

18 I declare under penalty of perjury under the laws of the United States that the foregoing is
19 true and correct.

20 Executed this 9th day of July, 2008, at San Francisco, California.

21
22 /s/ *HARRY T. GOWER, III*
23 HARRY T. GOWER, III
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DECLARATION OF SERVICE BY U.S. MAIL

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No.: C 08-0741-JF(PR)

I, Corazon Marcelino, declare:


I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

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Corazon Marcelino
Declarant


Signature